

REMARKS

The use of digital content typically results in revenue. In many systems, such as that disclosed by *Barritz*,¹ revenue depends on how often the content is used. The more times the content is used, the greater the revenue. This model is thus somewhat like a "juke box" in which each act of using content triggers a bolus of revenue.

Applicant teaches a system and method that goes beyond the "juke box" model of *Barritz*. In Applicant's method, the revenue depends both on the number of times the content is used, and on other factors, the choice of which is left to the content publisher.

These other factors are embodied in the "conditioning coefficient."² This conditioning coefficient provides another dimension that can depend on, for example, whether the content is in the top ten, whether the content is climbing or descending on the charts, or whether the author of the content is an artist of great stature.

Expressed more mathematically, *Barritz* teaches the idea of making revenue depend on a single variable:

$$Barritz_Revenue = f(Usage)$$

In contrast, in the claimed invention,

$$Revenue = f(Usage, Conditioning_Coefficient)$$

Section 102 rejection of claims 1 and 28

Claim 1 (as amended) recites the limitation of

"identifying a conditioning coefficient relating to a subset of digital works in the digital content aggregation."

Barritz fails to teach or suggest any such conditioning coefficient.

¹ *Barritz*, U.S. Patent No. 6,029,145.

² *Specification*, paragraphs 65-76, and FIGS. 5A-5B.

Claim 1 also recites:

“generating a revenue allocation for the digital content based on the coefficient *and* the usage information”

Barritz teaches calculation of revenue on the basis of only usage information. In particular, *Barritz* teaches counting how many times a software application is used and distributing revenue on the basis of that usage information. There is nothing in *Barritz* that would suggest distributing revenue on the basis of anything but usage. In particular, *Barritz* fails to teach generating revenue allocation on the basis of *both* a conditioning coefficient *and* usage information.

Applicant amends claims 1 and 28 to clarify this point by modifying “coefficient” with the adjective “conditioning” for consistency with the specification and with claim 15.

Claims 2-14 all depend on claim 1 and are allowable for at least the same reasons as claim 1. Claims 29-39 all depend on claim 28 and are allowable for at least the same reasons as claim 28.

Section 102 rejection of claim 15

Claim 15 recites

“a revenue conditioning server configured to calculate revenue allocations for digital content in an aggregation of digital content by allocating earned revenue for the aggregation as a whole based upon actual usage of the digital content and a conditioning coefficient”

Barritz fails to teach the limitation of allocating revenue based on *both* actual usage *and* a conditioning coefficient. As discussed above in connection with claim 1, at best, *Barritz* teaches allocating revenue on the basis of usage.

Claims 16-29 all depend on claim 15 and are therefore patentable for at least the same reasons.

Section 102 rejection of claim 21

Claim 21 recites

"second means for receiving one or more conditioning coefficients relating to author-specific valuations of digital content."

Barritz fails to teach anything related to "author-specific valuations of digital content."

Barritz teaches counting how many times software is used, and calculating revenue based on that number. There is no indication that *Barritz* cares about who wrote a particular software module or that prices might be set on the basis of who wrote a particular software module.

Claim 21 further recites

"means for calculating revenue allocations per digital asset, wherein the revenue allocations vary with amount of usage of each digital asset in a given time period, and wherein the revenue allocations vary with the one or more conditioning coefficients"

Barritz teaches calculating revenue based on how many times software is used. There is no teaching in *Barritz* of revenue depending on both "amount of usage" and "conditioning coefficients."

Claims 22-27 all depend on claim 21 and are patentable for at least the same reasons.

Dependent Claims

The Examiner cites the same portions of *Barritz* in connection with each and every rejection. Among these portions is an extended one that begins at the top of column 5 and does not end until the bottom of column 12. Applicant draws attention to Rule 1.104(c)(2):

"When a reference is complex or shows or describes inventions other than that claimed by the application, the particular part relied on must be designated as nearly as practicable."

The present office section fails to comply with Rule 1.104(c)(2) to an extent that makes it impossible to reasonably determine where the Examiner has identified the additional limitations

recited in each dependent claim. Accordingly, Applicant is not able to address the rejections of the dependent claims.

On the basis of the above deficiency in the present action, Applicant requests that any future office action be non-final and that it identify where the Examiner has identified each of the claim limitations in the cited art.


Summary

Now pending in this application are claims 1-39, of which claims 1, 15, 21, and 28 are independent. Enclosed is a petition for extension of time, with authorization to charge the extension fee to our deposit account identified below.

No additional fees are believed to be due in connection with the filing of this response. However, to the extent fees are due, or if a refund is forthcoming, please adjust our deposit account 06-1050 referencing attorney docket 12587-010001.

Respectfully submitted,

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